IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.603 OF 2003

Shri Dnyanu Bhiva Dukare ...Appellant

Versus

Smt.Bhamabai Ganpati Badh & Ors. ...Respondents

Shri Machindra Patil for the Appellant.

CORAM : ABHAY S.OKA, J.
DATED : JULY 10, 2007.

P.C.:

1. Heard Advocate appearing for the Appellant. The Appellant is the original Plaintiff. The case of the original Plaintiff is that he purchased the suit property for consideration of Rs.45,000/- by a registered Sale Deed dated 25th September, 1992 from one Sadashiv Gina Sangolkar and since then he has been in possession of the suit property. The Appellant filed a suit for injunction against the Respondents herein. The said suit for injunction was contested by the Defendants/Respondents. The case of the first Respondent was that she was the wife of the said Sadashiv and the second and fourth Respondents were her daughters born from Sadashiv. Her case is that in Misc. Civil Application No.17 of 1992, by an order dated 18th September, 1992 the Civil Court had attached the suit property. The trial Court decreed the suit. In an

Appeal preferred by the first Respondent, the decree has been set aside by the District Court.

2. The submission of the learned Advocate for the Appellant is that there was no evidence on record to show that the order of attachment which was an exparte order dated 18th September, 1992 was served to the said Sadashiv, the vendor of the Appellant. His submission is that the Respondents have not examined the Court Bailiff to show that the order was served and the attachment was infact levied. His submission is that even the Appellate Court found that though the order of attachment was published, there was no reference in the report of the Bailiff that the order of attachment was affixed upon the conspicuous part of the house of Sadashiv or in the office of Collector of the Solapur District as required by sub-rule 2 of Rule 54 of Order XXI of the Code of Civil Procedure, 1908. He submitted that neither the vendor of the Appellant nor the Appellant had knowledge of order of attachment on the date of execution of the Sale Deed.

3. I have considered the submissions. It is an admitted position that the order of attachment of the suit property was passed by the Civil Court on 18th September, 1992 and on 25th September, 1992 when the

order of attachment was in force, the Sale Deed was executed by the predecessor of the Appellant in favour of the Appellant. The Appellate Court has recorded a finding that not only the vendor of the Appellant but even the Appellant had knowledge of the order of attachment.

4. The Appellate court has referred to the certified copy of the report of the Bailiff 57. The Appellate Court, in my view, rightly held that the certified copy of the report of the Bailiff was admissible in evidence and it was not necessary for the Respondents to examine Court Bailiff as a witness. The Appellate Court found that the report of the Court Bailiff specifically refers to service of order of attachment to Sadashiv i.e vendor of the Appellants. The report of the Bailiff records that the order of attachment was affixed on conspicuous part of house of Sadashiv as he refused to accept the same. The report of the Bailiff also records that the order of attachment was proclaimed by beating drums and the same was affixed on the conspicuous part of Chavdi.

5. The Sale Deed executed by the Sadashiv in favour of the Appellant was thus illegal as the same was executed when the order of attachment of the suit

property was in force.

6. The suit filed by the Appellant for injunction is on the title based on the Sale Deed dated 25th September, 1992. The suit is not based only on prior possession of the Appellant. Once it is held that the Sale Deed executed in favour of the Appellant was illegal, it is obvious that the relief of perpetual injunction could not have been granted in favour of the Appellant as the Appellant does not get a valid title on the basis of the sale deed. Therefore, there is no reason to interfere with the judgment of the Appellate Court. No substantial question of law arises. Second Appeal is dismissed with no orders as to costs.

JUDGE